

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF REVENUE**

In the Matter of:	)	
	)	
E. & R. G.	)	OAH No. 10-0076-PFD
and B. G. (minor child)	)	Agency Nos. 2009-062-7385/7386/7387
	)	
<u>2009 Permanent Fund Dividend</u>	)	

**DECISION**

**I. INTRODUCTION**

E. G. and R. G. each applied for a 2009 Permanent Fund Dividend (PFD). Mr. G. also submitted an application as the sponsor of the couple's son, B. The Permanent Fund Dividend Division (Division) denied Mr. G.'s application (1) because he had not returned to Alaska for at least 72 hours during the last two years<sup>1</sup> and (2) because he had been eligible for the past ten PFDs despite being absent for more than 180 days each qualifying year, and had been absent for more than 180 days during the current qualifying year.

The Division denied Ms. G.'s application because she had been eligible for the past ten PFDs despite being absent for more than 180 days each qualifying year, and had been absent for more than 180 days during the current qualifying year, and (2) because she was not accompanying an eligible spouse during her absence.

The Division denied B. G.'s application because he did not have an eligible sponsor.

The G.s have completed the informal appeal process and have now requested a Formal Appeal by correspondence. Because they have been eligible for the past ten PFDs despite being absent for more than 180 days in each of the qualifying years, and because they were absent for more than 180 days during 2008, Mr. and Mrs. G. are not eligible for a 2009 PFD. Because he does not have an eligible sponsor, B. G. is not eligible for a 2009 PFD.

**II. FACTS**

The facts in this case are not disputed. Mr. G. is an active duty member of the U.S. armed forces. The G.s have not lived in Alaska for at least 180 days in any one year since

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<sup>1</sup> In its Formal Hearing Position Statement, the Division conceded that Mr. G. would likely qualify for an exception to the 72 hour rule, so this issue will not be addressed.

January 1, 1998.<sup>2</sup> They have returned to Alaska often, but never for a cumulative total of 180 days or more in any one year.<sup>3</sup>

### III. DISCUSSION

To be eligible for a PFD, an applicant must be physically present in Alaska during the entire qualifying year or, if absent, absent for one of several reasons specified by statute.<sup>4</sup> Recognizing the important nature of military service, the legislature has permitted extensive absences for active duty military personnel and their accompanying family members.<sup>5</sup> An allowable absence for military service is not unlimited, however.

An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section.<sup>6</sup>

This provision is technically applicable for most absences, but will most often apply to members of the military and their families.<sup>7</sup>

The G.s question whether they might qualify for “grandfather rights” since they left Alaska prior to 1998.<sup>8</sup> Eligibility for a PFD is not a fundamental right and the legislature is permitted to make changes regarding who is eligible.<sup>9</sup> The legislature did not provide for any exception for people who left the state prior to the effective date of this statute and it was not required to do so. This provision applies to the G.s even though they were not in Alaska when this statute was enacted.

The G.s have the burden of proving that the Division action denying their applications was incorrect.<sup>10</sup> Mr. G. does not dispute that he has been eligible for the past 10 PFDs despite being absent from the state for more than 180 days in each of the applicable qualifying years.

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<sup>2</sup> Nothing in the record shows any absence in 1998 or 1999, but Ms. G. states on appeal that they left the state prior to January 1, 1998. Exhibit 5, page 2. B. G.’s birth date is December 19, 1999, so his absence would not have begun before that date.

<sup>3</sup> Exhibit 1, pages 10 – 13.

<sup>4</sup> Alaska Statute AS 43.23.005(a)6).

<sup>5</sup> AS 43.23.008(3).

<sup>6</sup> AS 43.23.008(c). The exceptions to this rule apply to Members of Congress, their staff, and family members accompanying Members of Congress or their staff.

<sup>7</sup> This rule was passed by the legislature in 1998 and first impacted applicants applying for 2009 PFDs.

<sup>8</sup> Exhibit 5, pages 2 & 4.

<sup>9</sup> *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994).

<sup>10</sup> Alaska Regulation 15 AAC 05.030(h).

Nor does he dispute that he was absent for more than 180 days in 2008. Accordingly, he is not eligible for a 2009 PFD.

Ms. G.'s absences were not disqualifying in the past in part because she is the spouse of an active duty service member. This type of absence becomes disqualifying if the spouse is not eligible for a current year dividend.<sup>11</sup> Ms. G.'s absence in 2008 was disqualifying because, as discussed above, Mr. G. is not eligible for a 2009 PFD. In addition, Ms. G. has been eligible for each of the past 10 dividends despite being absent for more than 180 days in each of the applicable qualifying years. Pursuant to AS 43.23.008(c), she is not eligible for a 2009 PFD.<sup>12</sup>

B. G. is not eligible because he does not have an eligible sponsor.<sup>13</sup>

#### **IV. CONCLUSION**

E. and R. G. have been eligible for PFDs for the past ten years despite being absent from Alaska for more than 180 days in each qualifying year. Because they were absent for more than 180 days during 2008, neither of them is entitled to receive a 2009 PFD. Because he does not have an eligible sponsor, B. G. is not eligible to receive a 2009 PFD. The Division's decisions denying the G.s' applications are upheld.

DATED this 1<sup>st</sup> day of April, 2010.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>11</sup> AS 43.23.008(a)(3)(B).

<sup>12</sup> AS 43.23.008(c) refers only to an applicant's eligibility. Depending on a number of other factors, the G.s may still be Alaska residents despite being ineligible for a 2009 PFD.

<sup>13</sup> 15 AAC 23.113(b).

## Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30<sup>th</sup> day of April, 2010.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]